

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EBEN ALEXANDER, III, M.D.

Plaintiff,

v.

BRIGHAM AND WOMEN'S PHYSICIANS
ORGANIZATION, INC., successor to
Brigham Surgical Group Foundation, Inc.,
BOSTON NEUROSURGICAL FOUNDATION
INC., BRIGHAM SURGICAL GROUP
FOUNDATION, INC. DEFERRED
COMPENSATION PLAN, BRIGHAM
SURGICAL GROUP FOUNDATION, INC.
FACULTY RETIREMENT BENEFIT
PLAN, COMMITTEE ON COMPENSATION
OF THE BRIGHAM SURGICAL GROUP
FOUNDATION, INC., and
PETER BLACK, M.D.

Defendants.

Case No. 04-10738 MLW

**REVISED SUPPLEMENTAL AGREED STATEMENT OF
FACTS FOR CROSS SUMMARY JUDGMENT MOTIONS**

Pursuant to the Court's Order dated November 15, 2005, plaintiff Eben Alexander, III, M.D. ("plaintiff") and defendants Brigham and Women's Physicians Organization, Inc., Boston Neurosurgical Foundation, Inc., Brigham Surgical Group Foundation, Inc. Deferred Compensation Plan, Brigham Surgical Group Foundation, Inc. Faculty Benefit Retirement Plan, Committee on Compensation of the Brigham Surgical Group Foundation, Inc. and Peter Black (collectively, "defendants" or "BSG") submit this Revised Supplemental Agreed Statement of Facts ("Revised Agreement") in connection with the pending cross summary judgment motions. This Revised Agreement corrects, and is in lieu of, the original Supplemental Agreed Statement of Facts filed with the Court on December 19, 2005, which contained certain inaccuracies. This

Revised Agreement also contains factual stipulations regarding the 1998 FRBP which were not addressed or included in the prior Supplemental Agreed Statement of Facts. This Revised Agreement is based on the W-2s of the BSG employees for the years 1997, 1998, and 1999 and the practice reports of the BSG surgeons for the years 1997, 1998, and 1999, which were produced by defendants and represented by defendants to be true and accurate copies of those documents.

1. The average compensation of employees who received contributions to the UDC plan account during fiscal year 1997 was \$503,730.

2. The average compensation of employees who received contributions to the UDC plan account during fiscal year 1998 was \$581,320.

3. The average compensation of employees who received contributions to the UDC plan account during fiscal year 1999 was \$483,073.

4. The average compensation of employees who received contributions to the FRBP plan account during fiscal year 1997 was \$434,840.

5. The average compensation of employees who received contributions to the FRBP plan account during fiscal year 1998 was \$476,024.

6. The average compensation of employees who received contributions to the FRBP plan account during fiscal year 1999 was \$418,059.

7. The average compensation of all Brigham Surgical Group Foundation, Inc. ("BSG") employees for fiscal year 1997 was \$83,403.

8. The average compensation of all BSG employees for fiscal year 1998 was \$80,491.

9. The average compensation of all BSG employees for fiscal year 1999 was \$74,376.

10. During fiscal year 1997, fourteen (14) BSG employees contributed to the UDC plan account, comprising 5.8% of the total employee population. The names of those employees are as follows: David H. Adams, MD; Eben Alexander, III, MD; Sary F. Aranki, MD; Peter M.

Black, MD, PhD; David C. Brooks, MD; Lawrence H. Cohn, MD; John J. Collins, Jr., MD; Gregory S. Couper, MD; Magruder C. Donaldson, MD; Francis D. Moore, Jr., MD; Dennis P. Orgill, MD; Robert J. Rizzo, MD; Philip E. Stieg, MD; and David J. Sugarbaker, MD.

11. During the fiscal year 1998, nine (9) BSG employees contributed to the UDC plan account, comprising 3.3% of the total employee population. The names of those employees are as follows: David H. Adams, MD; Sary F. Aranki, MD; Lawrence H. Cohn, MD; Gregory S. Couper, MD; Magruder C. Donaldson, MD; Francis D. Moore, Jr., MD; Julian J. Pribaz, MD; Robert J. Rizzo, MD; and David J. Sugarbaker, MD.

12. During the fiscal year 1999, ten (10) BSG employees contributed to a UDC account, comprising 3.1% of the total employee population. The names of those employees are as follows: David H. Adams, MD; Sary F. Aranki, MD; Lawrence H. Cohn, MD; Gregory S. Couper, MD; Magruder C. Donaldson, MD; Elof Eriksson, MD, PhD; Robert J. Rizzo, MD; David J. Sugarbaker, MD; Scott J. Swanson, MD; and Eric J. Woodward, MD.

13. During the fiscal year 1997, twenty-one (21) BSG employees contributed to an FRBP account, comprising 8.7% of the total employee population. The names of those employees are as follows: David H. Adams, MD; Eben Alexander, III, MD; Sary F. Aranki, MD; Stanley Ashley, MD; Richard Bartlett, MD; Peter M. Black, MD, PhD; David C. Brooks, MD; Lawrence H. Cohn, MD; John J. Collins, Jr., MD; Gregory S. Couper, MD; Magruder C. Donaldson, MD; Charles A. Hergrueter, MD; Francis D. Moore, Jr., MD; Dennis P. Orgill, MD; Jerome P. Richie, MD; Robert J. Rizzo, MD; Samuel I. Singer, MD; Philip E. Stieg, MD; David J. Sugarbaker, MD; Anthony D. Whittemore, MD; and Michael J. Zinner, MD.

14. During the fiscal year 1998, seventeen (17) BSG employees contributed to an FRBP account, comprising 6.2% of the total employee population. The names of those employees are as follows: David H. Adams, MD; Eben Alexander, III, MD; Sary F. Aranki, MD; Richard Bartlett, MD; Peter M. Black, MD, PhD; David C. Brooks, MD; Lawrence H. Cohn, MD; John J. Collins, Jr., MD; Gregory S. Couper, MD; Magruder C. Donaldson, MD; Francis D. Moore, Jr., MD; Dennis P. Orgill, MD; Julian J. Pribaz, MD; Jerome P. Richie, MD;

Robert J. Rizzo, MD; Sugarbaker, MD; and Michael J. Zinner, MD.

15. During the fiscal year 1999, sixteen (16) BSG employees contributed to an FRBP account, comprising 4.9% of the total employee population. The names of those employees are as follows: David H. Adams, MD; Sary F. Aranki, MD; Peter M. Black, MD, PhD; Lawrence H. Cohn, MD; Gregory S. Couper, MD; Magruder C. Donaldson, MD; Elof Eriksson, MD, PhD; Carolyn M. Kaelin, MD; Francis D. Moore, Jr., MD; Dennis P. Orgill, MD; Jerome P. Richie, MD; Robert J. Rizzo, MD; David J. Sugarbaker, MD; Scott J. Swanson, MD; Anthony D. Whittmore, MD; and Eric J. Woodward, MD.

Respectfully submitted,

EBEN ALEXANDER, III, M.D.

By his attorneys,

/s/ Colleen C. Cook

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THE BRIGHAM SURGICAL GROUP
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BLACK, M.D.,

By their attorneys,

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